IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.2690 of 2007

Rajesh Vasantlal Shah — Applicant
Vs.
Jay Prakash P. Sheth & anr. — Respondents

Mr.A.A.Kocharekar for applicant.
Mr.A.S.Shitole, APP for State.

CORAM: B.H.MARLAPALLE, J.

August 16, 2007.

P.C.

. Heard Mr.Kocharekar, the learned counsel for the applicant who is seeking leave to appeal under Section 378(4) of Cr.P.C. against the order of acquittal passed by the learned Special Metropolitan Magistrate, 50th Court, Vikhroli, Mumbai on 24 24/4/2007 in C.C. No.60/SS/2006 filed under Section 138 of the Negotiable Instruments Act, 1881.

. As per the complainant the present applicant had filed the said complaint on behalf of his wife - Kavita who sold some shares through the accused and in discharge of that liability or debt the accused Shri Jay Prakash P. Sheth, Proprietor of M/s. M.P. Investments Shares and Stock Consultants had issued the dishonoured cheque and inspite of legal notice

given by the wife, the accused did not pay the cheque amount and even after receiving the summons from the Court, no steps were taken to clear the said amount.

. The defence of the accused was twofold viz. he never received the shares from the wife of the complainant and he had not issued the dishonoured cheque and in fact the cheque was stolen away from his office for which he filed a police complaint.

. On the affidavit of evidence the complainant was cross-examined. He agreed that he had no written authority to file a complaint on behalf of his wife except the general power of attorney and his wife was not actively involved in the business of dealing in shares. He also admitted that he had no documentary evidence to show that he or his wife had handed over some shares to the accused for sale. He also admitted that the accused had made complaint of theft of his cheques wherein his statement and the statement of his wife were recorded by the Pant Nagar Police Station.

. The trial Court noted that there was no documentary proof showing that the share certificates

at any point of time were handed over to the accused either by the complainant or his wife and, therefore, there was no question of selling of such shares and that the cheque was issued for discharge of such a liability. Consequently the complaint came to be dismissed.

. The reasoning set out by the trial Court does not call for reconsideration by this Court. Hence the leave to appeal is refused.

(B.H.MARL